



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2015, under Wis. Stat. § 49.85(4), to review a decision by the Milwaukee Enrollment Services in regard to Other, a telephonic hearing was held on August 19, 2015, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for the submission of closing arguments by the parties to DHA and to each other. MES timely submitted its closing argument with attachments to DHA and to petitioner. The petitioner failed to submit any responsive closing argument to DHA even by the date of this decision.

The issue for determination is whether the Department correctly sought to intercept the Petitioner's tax refund to collect an overpayment of AFDC.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED] HSPC senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received Aid to Families with Dependent Children (AFDC) during the period of November 1, 1995 to October 31, 1996
2. The Milwaukee county agency sent an October 12, 1998 Notice of AFDC Overpayment to the petitioner at her correct address of record indicating that she had been overissued \$7,404.00 in AFDC benefits in Claim [REDACTED] for the period of November 1, 1995 to October 31, 1996 due to client error. See Exhibit 2. The county's basis for the overpayment was that petitioner failed to report accurate household members and income. That notice (Exhibit 2) stated there was a 45-day time limit for any appeal based upon the action taken by the county in Exhibit 1. The petitioner did not file any appeal within the 45 day time period.
3. The Department of Workforce Development sent a first July 16, 1999 notice to the petitioner stating that her AFDC overpayment had been referred for state tax interception of in the total amount of \$35,062.00 in AFDC overpayments (four AFDC overpayment periods which included the overpayment as indicated in Finding of Fact #2 above. That notice stated that petitioner must file an appeal within 30 days of the date of that notice to have a timely appeal. The petitioner failed to file any appeal within 30 days of that July 16, 1999 notice.
4. The county agency sent Dunning notices to the petitioner on the following dates; February 2, 1999; May 4, 1999, and June 2, 1999.
5. The county agency mailed repayment agreements to the petitioner at her correct address.
6. On January 15, 2013, DHA conducted a hearing regarding the petitioner's AFDC tax intercept notices. That appeal was dismissed in a DHA decision as untimely on February 12, 2013.
7. The Department's Public Assistance Unit (PACU) of Workforce Development sent a later May 15, 2015 notice to the petitioner stating that her remaining AFDC overpayment had been again referred for state tax interception in the remaining amount of \$6,462.45 in Claim [REDACTED]. That notice stated that petitioner must file an appeal within 30 days of the date of that notice to have a timely appeal.
8. The petitioner filed her appeal with the Division of Hearings and Appeals (DHA) on June 15, 2015 regarding her May 15, 2015 AFDC tax intercept notice.
9. As of the August 19, 2015 hearing date, the Department has recouped \$941.55 from the petitioner resulting in an AFDC tax intercept remaining balance of \$6,462.45 in Claim [REDACTED].

DISCUSSION

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, Medical Assistance payments made incorrectly and overpayment of child care benefits.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

[REDACTED]

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added)

Petitioner has had many prior opportunities for hearing on the merits of the AFDC overpayment and prior tax intercepts, as noted in the above Findings of Fact. As petitioner had prior opportunities for a hearing on the merits of the overpayment, she does not now have a hearing right to question the merits of the overpayment itself. Therefore, the reason that AFDC overpayment occurred cannot be reviewed at this tax intercept hearing.

What could be reviewed was solely the correctness of the remaining tax intercept amount of \$6,462.45, as stated in Finding of Fact #9 above. During the hearing and while the record was held open, petitioner was unable to provide any reliable testimony or evidence to establish any error in the calculation of her remaining AFDC tax intercept amount. Furthermore, petitioner's testimony was basically unsupported allegations regarding her tax intercept that were not credible. The county agency documented the petitioner's AFDC overpayment and tax intercept history, notices, and calculation. The petitioner failed to establish any reliable testimony or evidence to refute the correctness of her remaining tax intercept amount of \$6,462.45. Accordingly, based upon the above, I conclude that the county agency is correctly seeking to intercept the Petitioner's tax refund to collect the remaining amount of petitioner's AFDC overpayment in Claim [REDACTED].

CONCLUSIONS OF LAW

1. The petitioner had prior opportunities for a hearing on the merits of the AFDC overpayment from the period of November 1, 1995 to October 31, 1996, and therefore the merits of that overpayment determination in Claim [REDACTED] are not available for review in this appeal.
2. The Department established it was correctly seeking to recover the remaining amount of petitioner's AFDC overpayment through the May 15, 2015 tax intercept against the petitioner's tax refund.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.



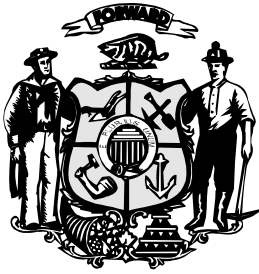
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of November, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 16, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit